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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, INC.; et al.,

Plaintiffs,

v.

MP3TUNES LLC and MICHAEL
ROBERTSON,

Defendants.

No. 07 Civ. 9931 (WHP) (FM)
ECF CASE

**DECLARATION OF MICHAEL
ABITBOL IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

MICHAEL ABITBOL declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Vice President, Legal & Business Affairs, for EMI Music Publishing. EMI Music Publishing is a trade name for a group of companies in the music publishing business (those companies, collectively, the "EMIMP Companies"). Those companies include certain of the plaintiffs in this action (the "EMI Publishing Plaintiffs"). The EMI Publishing Plaintiffs are Beechwood Music Corp., Colgems-EMI Music Inc., EMI April Music Inc., EMI Blackwood Music, EMI Full Keel Music, EMI Golden Torch Music Corp., EMI Longitude Music, EMI Virgin Music, Inc., EMI Virgin Songs, Inc., EMI Al Gallico Music Corp., EMI Algee Music Corp., EMI Feist Catalog, Inc., EMI Gold Horizon Corp., EMI Grove Park Music, EMI Hastings Catalog, Inc., EMI Mills Music, Inc., EMI Miller Catalog, Inc., EMI Robbins Catalog, Inc., EMI

U Catalog, Inc., EMI Unart Catalog, Inc., Jobete Music Co., Inc., Screen Gems-EMI Music, Inc., Stone Agate Music, and Stone Diamond Music.

2. I am an attorney duly admitted to practice in the State of New York. My job responsibilities at EMI Music Publishing include legally evaluating (and in appropriate cases, negotiating and entering into licenses with) new technologies and services, including online services. I submit this declaration in opposition to the motion for summary judgment made by Defendant MP3tunes LLC ("MP3Tunes" or "Defendant"). I have personal knowledge of and have reviewed relevant documents concerning the facts set forth herein.

3. I understand that MP3tunes has claimed that "One or more of the Plaintiffs have authorized distribution of one or more Plaintiffs' copyrighted works for free down load in connection with" certain websites that are listed in paragraph 85 of MP3tunes' Statement of Undisputed Facts, and that, in support of this claim, MP3tunes has cited unspecified portions of my deposition testimony. I further understand that MP3tunes has claimed that "One or more of the Plaintiffs have authorized distribution of one or more Plaintiffs' copyrighted works for free down load" at certain so-called "artists web sites" listed in paragraph 88 of MP3tunes' Statement of Undisputed Facts, and that, in support of this claim, MP3tunes has cited certain documents produced by the EMI Publishing Plaintiffs, without describing, discussing, or explaining any of those documents.

4. Both of those statements are extremely misleading, for the reasons set forth herein.

5. As a threshold matter, neither EMI Music Publishing nor the EMIMP Companies manufacture or sell records in any configuration, including as digital downloads. For this reason,

the EMIMP Companies do not themselves make any recordings available for “free” download on the internet.

6. On occasion, a record label, artist, artist representative, or charity organization may, for promotional or charitable purposes, wish to make available on the internet a download of a sound recording without requiring a monetary payment from the end user receiving the download. Where the sound recording embodies a musical composition owned or controlled by an EMIMP Company, the entity that wishes to make the download available must obtain permission from EMI Music Publishing in order to make the download available, and will generally ask EMI Music Publishing to grant a so-called “gratis license” pursuant to which EMI Music Publishing will waive the royalty that would otherwise be payable to EMI Music Publishing for a certain, limited number of downloads and/or for a limited time period.

7. EMI Music Publishing does not routinely waive its right to receive royalties from digital downloads. As I testified in my deposition, and as is reflected in the documents we produced, a portion of which are attached as Exhibits K and M to the Gulia Declaration, it considers any request for a gratis license very seriously, and grants such licenses only on a very limited, and very restricted basis. During all times relevant to this case, each such request for a gratis license had to be approved by the CEO of EMI Music Publishing.

8. As a result, EMI Music Publishing knows each download it has authorized because it has in its files the gratis license requests, the approval or denial of such requests, and confirmations of such approvals. Those documents, reflecting gratis license requests made between 2005 and February 2010, were produced to Defendants (subject to appropriate objections as to relevance).

9. EMI Music Publishing's knowledge and the documents produced by the EMI Publishing Plaintiffs directly contradict the statement contained in paragraph 102 of MP3tunes' Statement of Undisputed Facts that "The Publishers do not know the full extent of their authorization of free downloads on the Internet." In addition, that statement is not supported by my deposition testimony cited by MP3tunes. In fact, my testimony explicitly refers counsel for Defendants to the documents produced by the EMI Publishing Plaintiffs which evidence the licenses granted.

10. Each of the gratis licenses granted by the EMIMP Companies from 2005 through the EMI Publishing Plaintiff's production of documents in February 2010 is set forth in summary form on Exhibit A hereto. The Bates numbers listed on Exhibit A identify the complete documents produced by the EMI Publishing Plaintiffs that reflect the terms and approval of the gratis license.

11. As reflected on Exhibit A, and the underlying documents identified therein, of the over 1.3 million compositions owned or controlled by EMI Music Publishing, only one (1) composition owned controlled by an EMIMP Company was the subject of a gratis license issued before 2006 when the Sideload website was introduced, and only seven (7) were the subject of gratis licenses issued prior to the commencement of this action in November 2007.

12. Virtually all of the documents that MP3tunes cites in its motion relate to the waiver of a royalty fee for a download that was offered on the internet *after* Defendants had received several DMCA notices from the Plaintiffs, and *after* this lawsuit was filed in November 2007. But even these post-suit licenses cover a total of only 133 downloads.

13. None of the compositions that are the subject of any gratis license issued by any EMIMP Company are at issue in this action. Moreover, I have been informed by counsel that,

based on Plaintiffs' expert's review of the source code and database tables produced by Defendants, *only two (2)* of the authorized downloads that are the subject of those gratis licenses were among the hundreds of thousands of works available on the Sideload website.

14. Regardless of whether a gratis license was issued pre- or post-suit, the notion that those works were placed on the internet by EMI Music Publishing so that they could "spread like a virus" is belied by the highly restrictive terms of those licenses.

15. As demonstrated on Exhibit A, a significant majority of the licensed downloads included a restriction whereby the user had to input certain data in order to obtain the download, which was not available to the public at large.

16. Specifically, several downloads authorized by the EMI Publishing Plaintiffs required a user to input a unique code obtained from a "download card" distributed to the user in connection with a particular promotion. For example, in 2006, EMI Music Publishing issued a gratis license for the download of a song by the band "The Feeling" in connection with a promotion by Coca Cola. (*See* Gulia Decl., Ex. M at EMP 51606 (complete document at EMP 51606-07)). The license limited the availability of the download to students who received a "download scratch card" distributed to them in their school cafeteria upon their purchase of a Coca-Cola product. The download scratch card revealed a unique download code which was required to be input to download the authorized track.

17. As reflected on Exhibit A, similar to the foregoing example, download codes from download cards or promotional materials distributed at particular events or retail stores were also required to download authorized tracks by Enrique Iglesias, Rooney, the Counting Crows, Michelle Williams, the B-52s, Jamey Johnson, Noel Gourdin, Cash Cash, Diane Birch and others. (*see e.g.* Gulia Decl., Ex. K at Abitbol Dep. Exs. 53 at EMP 02143, 45-46, 48 at EMP

02077; Gulia Decl. Ex. M at EMP 51612 (complete document at EMP 51612-15), EMP 51555 (complete document at EMP 51559-60), EMP 51400 (complete document at EMP 51400-401), EMP 51678, EMP 51419 (complete document at EMP 51419-20), EMP 51476 (complete document at EMP 51476-78), EMP 51638 (complete document at EMP 51638-9)).

18. In addition, some of the gratis licenses issued by EMI Music Publishing required the user to enter a code he or she received upon purchase of a particular album. (*See e.g.* Gulia Decl., Ex. K at Abitbol Dep. Exs. 23 at EMP 1950-51, 41 and 51). For example, in 2008, EMI Music Publishing authorized a free download of the song “Say When” by The Fray on Bestbuy.com, but only for customers who pre-ordered The Fray’s new album on the website. (*See* Gulia Decl., Ex. K at Abitbol Dep. Ex. 23).

19. Other gratis licenses issued by EMI Music Publishing required the user to provide his or her personal data in order to access the authorized download, which data could be used later by EMI Music Publishing or the record label or artist for marketing purposes. (*See e.g.* Gulia Decl. Ex. K at Abitbol Dep. Exs. 22, 29 at EMP 01977; Gulia Decl. Ex. M at EMP 51623 (complete document at EMP 51623-24). For instance, in order to receive the download authorized by EMI Music Publishing of the Hey Monday song “Homecoming” via the artist’s website, users were required to enter in their email addresses and mobile telephone numbers. (*See* Gulia Decl. Ex. K at Abitbol Dep. Ex. 29 at EMP 01977).

20. The downloads authorized by EMI Music Publishing were also at times restricted to, among other things, winners of particular contests (*see e.g.* Gulia Decl. Ex. K at Abitbol Dep. Ex. 47), donors to particular charities (*see e.g.* Gulia Decl. Ex. K at Abitbol Dep. Ex. 40), and military personnel (*see e.g.* Gulia Decl. Ex. K at Abitbol Dep. Ex. 26).

21. Furthermore, as demonstrated on Exhibit A, all of the licenses either limit the time period during which the download could be offered (e.g., it was only to be offered from the licensed website for a period of 90 days), limit the number of downloads that could be offered (e.g., a maximum of 1500 downloads), or both.

22. A universal limitation contained in all of EMI Music Publishing's gratis licenses is that each license expressly limits the authorization of the download to the website(s) being authorized. (*See e.g.* Gulia Decl., Ex. K at Abitbol Dep. Exs. 7, 22).

23. There are reasons for this. As a general matter, EMI Music Publishing limits the license to a specific source website because EMI Music Publishing and its songwriters receive a promotional benefit from the user's visit to the source website. For instance, EMI Music Publishing authorized a free download of a song by the artists Kate & Kacey on People Magazine's website for a six week period. (*see* Gulia Decl., Ex. M at EMP 51386 (full document at EMP 51386-87)). In exchange for the download, People Magazine featured Kate & Kacey in its magazine, included a featurette on the People.com website, and the website included links to the artist's own website and to iTunes for purchase of the full album. EMI Music Publishing and Kate and Kacey benefitted from the work being made available on the People Magazine website because visitors to that site, attracted by the download, became educated about Kate and Kacey, and were encouraged to purchase other works by Kate and Kacey via an iTunes "buy" button on the People.com site.

24. EMI Music Publishing also receives other benefits, including user data for inclusion in an artist's mailing list. For example, EMI Music Publishing authorized 1500 free downloads of the song "Miss You" by the artist Tinashe for a period of 3 months on the artist's website. (*See* Gulia Decl., Ex. M at EMP 51507 (full document at EMP 51507-09).) In exchange

for the free download, users were required to add their personal information to the artist's database. In these cases, EMI Music Publishing receives a benefit of having users visit the artist's website in order to receive the download, where they learn more about the artist, and provide user data which can then be used to promote and market the artist and the artist's works.

25. In addition to the foregoing data, EMI Music Publishing receives other benefits from licensing free downloads to specific websites, including promoting specific charities by having users visit the charity website and donate to obtain a free download. (*See* Gulia Decl. Ex. K at Abitbol Dep., Ex. 40)

26. Each gratis license also expressly provides that the downloads are "for promotional purposes only." (*See e.g.* Gulia Decl., Ex. K at Abitbol Dep. Exs. 4-8). In this regard, these licensed and restricted downloads are not intended to form the basis of an on-demand music service, or to otherwise be monetized, or to promote goods and services beyond those contemplated in the license.

27. None of the websites authorized by EMI Music Publishing include Sideload.com, MP3tunes.com, or any other website owned by Defendants. None of the benefits discussed above would be realized by EMI Music Publishing if the user could get the download directly from MP3tunes through the Sideload website.

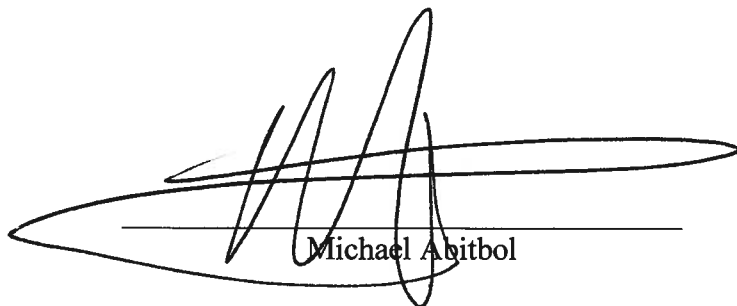
28. Based on my review of Defendants' submission, it appears that Defendants have cited to nearly all of the licenses produced by the EMI Publishing Plaintiffs. However, it also appears that they do not acknowledge the restrictions and limitations built into the terms of any of the licenses. In fact, Exhibit M to the Gulia Declaration, appears to include only the first page of each email exchange discussing and, at times, approving gratis licenses for download, and does not include the complete document. By not including the full email exchange, MP3tunes

often excluded the limiting terms of the license from the record, and at times, has even prevented the ability to determine the song for which the license is being approved. Exhibit A hereto lists the Bates ranges for full documents reflecting all terms of the licenses approved.

29. In addition, as support for its claim that Plaintiffs regularly authorized free downloads, Defendant has also cited several requests which were either (i) expressly rejected by EMI Music Publishing (*see* Gulia Decl., Ex. M at EMP 51510, 51771, 51898); (ii) not approved by EMI Music Publishing (*see* Gulia Decl., Ex. K at Abitbol Dep. Ex. 44; Gulia Decl. Ex. M at EMP 51325, EMP 51894); or (iii) for songs distributed by means other than the internet (e.g. via distributed memory cards) (*see* Gulia Decl., Ex. K at Abitbol Dep., Exs. 13-14).

30. Finally, based on my review of the filings and submissions in this action, I understand that MP3tunes makes available a large number of popular musical compositions owned or controlled by the EMIMP Companies, including many classic, widely-recognized songs by, for example, the Temptations, Marvin Gaye, Stevie Wonder, and Bob Marley. As is evident from Exhibit A hereto, EMI Music Publishing has never licensed such classic songs for inclusion in a promotional download. Rather, the overwhelming majority of the songs authorized are songs from emerging artists or newly released albums.

Dated: New York, New York
November 23, 2010

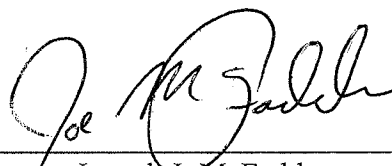


Michael Abitbol

Certificate of Service

I, Joseph J. McFadden, do hereby certify that on this 24th day of November 2010, I caused true and correct copies of the within Supplemental Declaration of Andrew Bart, Supplemental Declaration of Ellis Horowitz, Supplemental Declaration of Alasdair McMullan, Supplemental Declaration of Michael Abitbol, Rule 56.1 Counterstatement of Undisputed Facts, Memorandum of Law in Opposition to Motion for Summary Judgment, and Plaintiffs' Evidentiary Objections to be served via the Court's Electronic Filing System, electronic transmission, and overnight delivery upon the following individual:

John Dellaportas, Esq.
Duane Morris
1540 Broadway
Suite 1400
New York, NY 10036-4086

A handwritten signature in black ink, appearing to read "Joe McFadden", is written over a horizontal line.

Joseph J. McFadden

EXHIBIT A

Exhibit A**2005-2007****2005**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATION ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
1/24/2005	Imagine	Madonna	Tsunami Relief Concert via Sony Connect site (www.connect.com)			Requires user to donate to Tsunami Relief Charity to download track	EMP 02160-64

2006

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATION ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
7/17/2006	Counting 5, 4, 3, 2, 1	Thursday	Sony Computer Entertainment America website as part of PlayStation Portable Warped Tour Content Pack (www.scea.com)	6 weeks		Download limited to 30 Seconds	EMP 02157-59
12/19/2006	TBD	The Feeling	Coca Cola Promotion on Universal Music Store site (coca-cola.com; universalmusic.com)	2 weeks	200K	Requires Download Card Code from scratch cards distributed in school cafeterias to students who purchase Coca-Cola Products	EMP 51606-07

2007

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATION ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
3/6/2007	You Know I'm No Good	Amy Winehouse	MTV Discover and Download (mtv.com, mtv2.com, vh1.com)	2 months		Music file "times out" (<i>i.e.</i> becomes unplayable) after 30 days	EMP 02151
5/23/2007	High Maintenance	Joanna Cotten	www.discoverjoannacotten.com (WB Nashville)	6 months or until cap reached	10K	Requires user to forward streams of two tracks by artists to 10 friends to access free download	EMP 02144-50 EMP 51316-17
6/8/2007	The Prayer	Bloc Party	Fuse TV Promotion (www.fuse.tv)	3 months			EMP 51553-54
7/24/2007	Hero (Thunderpuss Club Mix)	Enrique Iglesias	Walmart Hispanic Heritage Promotion (www.walmart.com)	3 months	300K	Requires Download Card Code distributed at select Walmart Retail Stores	EMP 51612-15

Exhibit A**2008****2008**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATIONS ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
2/4/2008	Calling the World	Rooney	Artist's Website (www.rooney-band.com)	Until Cap Reached	30K	Requires Download Card Code distributed at Jonas Bros.concerts	EMP 51559-60
3/25/2008	Hot Corner	B-52's	Wal-Mart Weekly Free Download (www.walmart.com)	1 week			EMP 01836
4/11/2008	Without Me	Goldfinger	Rhapsody (www.rhapsody.com)	1 week			EMP 51326
4/15/2008	Washington Square	Counting Crows	Starbucks Song of the Week Promotion (www.starbucks.com)	1 week		Requires Download Card/Digital Redemption Code distributed in Starbucks outlets	EMP 02141-43
4/23/2008	American Girls Carriage Hard Candy Have You Seen Me Lately High Life	Counting Crows	Citibank/Neurotic Media Promotion (www.neuroticmedia.com)	9 weeks		Requires Purchase of Counting Crows Album and limited to Citibank Cardholders	EMP 02093
4/23/2008	Lose Big	Eef Barzealay	Border's (www.borders.com)	2 weeks			EMP 51335
5/5/2008	Sweet and Low	Augustana	Amazon Song of the Week (www.amazon.com)	1 week			EMP 02084
5/9/2008	Hot Corner	B-52's	Border's Download of the Week (www.borders.com)	1 week			EMP 02079-83
5/9/2008	My Whiskey Years	Joe Nichols	A Universal Music Group site (www.universal.com)	Until Cap Reached	5K	Only available with Redemption Code from CD Sampler passed out at CMA Music Fest	EMP 51348-51
5/14/2008	Perfectly Clear	Jewel	People Magazine (www.people.com)	6 weeks			EMP 02131
5/16/2008	U Can't	Once Chance	AT&T Summer Music Pass (www.musicpass.com)	Winners selected at end of 30 day contest Promotion	50	Download only available to 50 winners with redemption codes	EMP 02060-73
5/23/2008	Longest Day My Sweet Love	John Mayer	Vanity Fair (www.hearmusic.com)	30 days	400K	Must enter information from advertisement in Vanity Fair August Issue	EMP 51375-76

Exhibit A**2008**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATIONS ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
5/27/2008	This Boy's In Love	The Presets	Microsoft Zune Marketplace Online Store "Zune Freebie" (www.zune.net)	1 Week			EMP 02165
5/28/2008	I Need You	The DEY	AllHipHop.com Black Music Month (allhiphop.com)	60 days	50K	Requires Code sent to AllHipHop readers	EMP 51370-73
6/1/2008	Falling in Love at a Coffee Shop Need U Bad Shiksa Temporary Insanity	Landon Pigg Jasmize Sullivan Say Anything Krista Hidalgo	AT&T Summer Music Pass (www.musicpass.com)	Winners selected at end of 30 day contest Promotion	50	Download only available to 50 winners with redemption codes	EMP 02060-61
6/4/2008	Round Here You Can't Count on Me	Counting Crows	PBS and Mastercard Promotion (www.mastercard.com)	30 days			EMP 51650-52
6/22/2008	Hello Heartbreak We Break The Dawn	Michelle Williams	Gay Pride Parade Sampler (www.hipdigital.com)	30 days	5K	Requires Digital Sampler Card distributed at Gay Pride Parade	EMP 02055
7/15/2008	Hot Corner Strobe Light	B-52's	www.Astralworks.com and www.Dropcards.com	3 months	10K	Requires Download Card Code distributed at Gay Pride events and at dates along the 'True Colors' Tour	EMP 02052
7/15/2008	Shattered	O.A.R.	Amazon Free Download of the Week (www.amazon.com)	1 week			EMP 02044-47
7/17/2008	Between Jennings and Jones	Jamey Johnson	Artist's Website (www.jameyjohnson.com)	60 days or Until Cap Reached	5K	Requires Download Card Code distributed in prize packages at Jamey Johnson Country Night Club events	EMP 02074-78
7/21/2008	Energy	Keri Hilson	MTV Discover and Download (www.mtv.com)	60 days or Until Cap Reached	20K		EMP 02009
7/21/2008	Everybody	VV Brown	KCRW Podcast (www.kcrwmusic.com)	2 weeks		Download is in podcast form only grouped with other tracks	EMP 51918-21
7/30/2008	Get Up	Mary Mary	Red Star Concert Series (www.heinekenredstarsoul.com)		35K	Need Download Code from one of 10K cards distributed or 25K codes given out online	EMP 51690-92
7/30/2008	Open	Noel Gourdin	Red Star Concert Series (www.heinekenredstarsoul.com)		35K	Need download code from one of 10K cards distributed or 25K codes given out online	EMP 51400-401
8/1/2008	21st Century Life (formerly titled "Black & Gold")	Sam Sparro	Virgin Recommends Digital Promotion (www.virginmega.com)	9 weeks	10K	Requires download code distributed with purchase of Virgin Recommended titles	EMP 01982-07 EMP 51638-39
8/8/2008	Between Jennings and Jones	Jamey Johnson	People Magazine (www.people.com)	6 Weeks			EMP 02040

Exhibit A**2008**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATIONS ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
8/8/2008	In Color	Jamey Johnson	People Magazine (www.people.com)	6 weeks			EMP 51380-81
8/8/2008	Not My Judge	Kate & Kacey	People Magazine (www.people.com)	6 weeks			EMP 51386-87
8/8/2008	TBD	The Lost Trailers	People Magazine (www.people.com)	6 weeks			EMP 51394-96
8/12/2008	Shake It	Metro Station	New York Post Promotion (www.nypost.com/entertainment.music)	4 days	500		EMP 02005
8/20/2008	TBD	Kate & Kacey	Artist Website (www.kateandkacey.com)		3K-5K	Download requires registration and submission of user information at artist's website	EMP 51623-24
8/26/2008	High Cost	Jamey Johnson	www.NOWcountrybonus.com website	2 years		Limited to purchasers of NOW Country commercial CD (bonus offer included in the commercial cd package)	EMP 02034- 39
8/27/2008	So Far Away	Carole King	Rockingale Records (Artist's Independent Label www.caroleking.com)	3 months			EMP 51645-49
9/3/2008	Hello Heartbreak Lucky Girl Private Party Stop This Car Thank U The Greatest Til the End of the World Too Young for Love Unexpected We Break the Dawn	Michelle Williams	Columbia Records/Village Voice through Passalong (www.FYE.com)	Until Cap Reached	3.5K	Requires Download Code printed in the Village Voice Newspaper	EMP 01978-81
9/10/2008	Homecoming	Hey Monday	Artist's Website (www.heymondaymusic.com)	1 month	5K	Requires user to enter email address and mobile number	EMP 01976-77
9/16/2008	Seventeen Forever	Metro Station	Seventeen Magazine (www.seventeen.com)	Until Cap Reached	10K	Requires Download Code available in magazine	EMP 02017-20 EMP 51694
9/22/2008	Heroes Of Our Time	DragonForce	Microsoft Ignition Promotion (including msn.com, xboxlive, Windows Media Player, and Zune Marketplace) (www.msn.com, www.zune.net)	1 week			EMP 51726-33

Exhibit A**2008**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATIONS ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
9/25/2008	Love Story	Mariah Carey	World Food Program (www.fromhungertohope.com)	2 months		Only available to people who donate at least \$1 to the charity	EMP 02021-33
9/30/2008	Love Letter to Japan	The Bird and the Bee	Bird and Bee Promotion	Until Cap Reached	20K	Requires Download Card distributed at Artist's concerts	EMP 01956-58 EMP 51759-60
10/1/2008	Who I Am	Mandi Perkins	Walmart Single of the Week (www.walmart.com)	1 week			EMP 01969
10/4/2008	The Greatest	Michelle Williams	Girls Rock Avon Walks for Breast Cancer (www.myplaydigital.com) (via www.girlsrockandwalk.com)	9 months	10K	Requires Download Card distributed at Avon Breast Cancer Walks	EMP 01972-75 EMP 51749-51
10/30/2008	Headphones	I'm From Barcelona	NPR "All Things Considered" Song of the Day Podcast (www.npr.org)	1 year			EMP 51913-14
11/1/2008	Us Against the World (remix)	Christina Milian	944 Magazine Promotion (www.944.com)	1 month			EMP 01952-55
11/24/2008	Make Me Believe	Angel Taylor	Artist Website (www.angeltayloronline.com)	Until Cap Reached	10K	Requires fans to sign up for artist's mailing list	EMP 01945-47 EMP 51642
11/25/2008	Dance Floor Anthem Freedom Never Cries I Don't Want to Be in Love Shakin' My Cage With Me	Good Charlotte Five for Fighting Good Charlotte Joe Perry Sum 41	Military Compilation Promotion (www.aafes.com)	6 months	200K	Available to Military Personnel Only	EMP 01959-61
11/26/2008	Chainsaw	Daniel Merriweather	Google Search Campaign - Artist's Website and MySpace Page (www.danielmerriweather.com; www.myspace.com/danielmerriweather)	Until Cap Reached	1K		EMP 01928-31
11/26/2008	Play the Game	Beach House	Red Hot AIDS Benefit (www.redhot.org)	Until Cap Reached	10K-20K		EMP 51802-09
12/4/2008	Man Up	Blue Van	KCRW Download of the Day (www.kcrw.com)	1 day	2.5K		EMP 51818-19
12/8/2008	Control	Metro Station	Bebo (www.bebo.com)	3 weeks	5K	Requires user to input personal data	EMP 51660-61
12/17/2008	The Fear	Lily Allen	Clear Channel Promotion (Clear Channel Owned and Operated websites)	1 week	30K		EMP 01898-1905

Exhibit A**2008**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATIONS ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
12/21/2008	Say When	The Fray	Best Buy Promotion (www.bestbuy.com)	6 weeks	10K	Limited to Customers who pre-order The Fray's new album	EMP 01950-51
12/23/2008	Control	Metro Station	New York Post 2008 Songs of the Year Promotion (www.nypost.com)	4 days	300		EMP 01941-44
12/23/2008	Make Me Believe	Angel Taylor	New York Post Fresh Faces of '09 Promotion (www.nypost.com)	Until Cap Reached	300		EMP 51674-75
12/30/2008	In this City	Iglu & Hartley	Walmart Free Download of the Week (www.walmart.com)	1 week	5K		EMP 01906

Exhibit A**2009 - Feb. 2010****2009-February 2010**

LICENSE/ APPROVAL DATE	SONG TITLE	ARTIST	WEB URL/HOST OF AUTHORIZED DOWNLOAD	TIME LIMITATIONS ON AUTHORIZED DOWNLOAD	CAP ON NUMBER OF DOWNLOADS	OTHER LIMITATIONS ON DOWNLOAD	BATES RANGE
1/5/2009	Got No Place to Go	Gabriella Cilmi	Seventeen Magazine 17 Days of Download Promotion (www.seventeen.com)	2 months	10K	Requires Download Code distributed in Seventeen Magazine February Issue	EMP 01932-37
1/8/2009	Party In Your Bedroom	Cash Cash	Hot Topic Promotion (www.stockhound.com)	2 weeks	500	Requires Download Flyer distributed at Hot Topic stores	EMP 15678
1/12/2009	Almost Perfect	The Pretenders	KCRW Download of the Day (www.kcrwmusic.com)	1 day	1K		EMP 01892
1/24/2009	Untitled	Will.I.Am, David Foster, John Baptist, George Pajon (EMI)	Oprah Inauguration Promotion (www.oprah.com)	2 days			EMP 51683-84
2/6/2009	A Boy like Me	Jessica Harp	People Magazine Country Music Special (www.people.com)	6 weeks			EMP 01888
2/11/2009	Nothing to Worry About	Peter Bjorn	KEXP Song of the Day Podcast (http://kexp.org/)	1 day			EMP 02167
2/20/2009	Is It OK	Missstress Barbara	www.rcrdlbl.com	1 week			EMP 02166
2/23/2009	24	Rich Girl	Facebook Promotion (www.facebook.com)	1 month	5K		EMP 01873-75
3/6/2009	TBD	The Answer	Napster/RED Promotion (www.napster.com)	2 weeks			EMP 51840-42
3/12/2009	If You're Out There	John Legend	John Legend Remix Contest (www.indaba.com)	1 month		Not Complete Track -- Downloads limited to individual audio stems	EMP 01866-72
3/25/2009	Apple	Pete & Charlie	Invisible Children Awareness charity (www.biggestbeliever.com)	1 month		Download includes video concerning the charity and times out after 30 days	EMP 51854-57
3/25/2009	Time To Let Go	Gloriana and Kyle Cook	People Magazine (www.people.com)	6 weeks			EMP 51845-46
4/6/2009	Wrong (Caspa Remix)	Depeche Mode	Facebook Promotion (www.facebook.com)	1 week or until 100K cap reached	100K		EMP 01854

Exhibit A**2009 - Feb. 2010**

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4/9/2009	I Like You So Much Better When You're Naked (live version)	Ida Maria	MTV Discover and Download Promotion (www.mtv.com)	90 days			EMP 51865
5/1/2009	Closer to Love	Matt Kearney	Borders Download of the Week Promotion (www.borders.com)	1 week	2K		EMP01859-62
5/19/2009	Here We Go	Matt Kearney	Best Buy (www.bestbuy.com or www.mattkearney.com)	6 weeks		Limited to customers who pre-order Matt Kearney's album	EMP01859-62
6/2/2009	Dreaming Love Love On You Whole Lotta Gone	Kate & Kacey	Yahoo The New Now (www.music.yahoo.com)	6 months			EMP 51415-16
6/9/2009	Nothin' But a Miracle	Diane Birch	Steve Madden (www.stevemadden.com and www.stevemaddenmusic.com)	60 days	15K	Requires Download Card distributed to purchasing customers in Steve Madden retail stores	EMP 51419-20
7/1/2009	Finger Prints	Beast	Osheaga Music Festival	60 days	20K	Need code from one of 30K cards or 20K emails; Codes only usable in Canada	EMP 51411-12
7/18/2009	Nothin' But a Miracle	Diane Birch	Microsoft Zune "As Seen On TV" Promotion (www.zune.net)	1 week	50K		EMP 51425-26
7/24/2009	Weightless	All Time Low	Nike Women New Music Tuesdays (www.nikewomen.com)	1 week or until 2.5K cap is reached	2.5K		EMP 51429-31
8/6/2009	Hit The Ground Runnin'	Keith Urban	Artist's Website via Hidden Link Only (www.keithurban.net)	1 week	20K	Restricted to fans who attend Urban's concerts and receive text message at end of show with download code	EMP 51437-39
8/7/2009	A Ghost	Landon Pigg	RCA Music Group/Filter Music Media Marketing Lollapalooza Promotion (www.raggedmag.com)		5K-10K	Requires Download Card distributed to Lollapalooza concertgoers in Chicago	EMP 51457-59
8/12/2009	Mathematics Meddle New In Town Stuck on Repeat	Little Boots	AOL Interface Podcast Promotion (www.aol.com)	3 months		Several tracks downloaded as podcast with interview segments interspersed between tracks and cannot be downloaded as individual tracks	EMP 51881-83
8/19/2009	Manipulating Woman	Ladyhawke	Amazon (www.amazon.com)	1 week			EMP 51465-66
8/21/2009	Now That I'm A B*tch	Livvi Franc	Jive Records Back-To-School Campaign using SME College Reps		25K	Requires code from Download Card distributed on college campuses	EMP 51476-78

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8/21/2009	Now That I'm A B*tch	Livvi Franc	LOGO NewNowNext (www.logoonline.com)	90 days or until cap is reached	260K	at the NewNowNext event in California and 200K online codes distributed on logoonline.com)	EMP 51476-78
8/25/2009	One Day	Matisyahu	Kenneth Cole "One Day For Change" Campaign (www.onedaychange.net)	earlier of 3 weeks or until cap reached	20K		EMP 51469-70
8/26/2009	Dance, Dance, Dance I'm Good, I'm Gone Little Bit Tonight	Lykke Li	AOL Interface Podcast Promotion (www.aol.com)	3 months		Several tracks downloaded as podcast with interview segments interspersed between tracks and cannot be downloaded as individual tracks	EMP 51887-89
9/1/2009	Temporary Insanity	Krista Hidalgo	RMG Back-To-School Campaign using SME College Reps	60 Days	25K	Requires Download Card	EMP 51462-63
10/4/2009	Rocksteady	Rox	Rough Trade Rox Tour Promotion (www.roughtraderrecords.com/rox/)	2 weeks	1K		EMP 51484
11/4/2009	Crying Blood L.O.V.E. Quick Fix	VV Brown	KCRW Podcast (www.kcrwmusic.com)	2 weeks		Download is in podcast form only grouped with other tracks	EMP 51918-21
11/10/2009	Did It Again (Remix)	Shakira	Facebook Promotion (www.facebook.com)	Until Cap is reached	75K	Limited to fans who use Shakira's free facebook application Promoting iTunes pre-order of new album	EMP 51485-87
11/10/2009	Oh Yeah	Jaicko	Artist's website (www.jaickomusic.com/) and MySpace page (www.myspace.com/jaicko)	10 weeks or until cap is reached	2.5K	Requires fans to register on artist's myspace page and/or artist's website	EMP 51593-95
12/2/2009	Keep It Going Louder	Major Lazer	MySpace RCRD of the Day Promotion (www.myspace.com)	1 week (featured 1 day and archived for 1 wk)			EMP 51491-92
12/2/2009	Valentino	Diane Birch	Nike Women New Music Tuesdays (www.nikewomen.com)	1 month or untill 2500 cap reached	2.5K		EMP 51529-31
12/26/2009	TBD	Diane Birch	Barnes & Noble Free Track Download Promotion (www.bn.com/textbooks)	1 month		Available only to students who sign up for the Barnes & Noble textbook site	EMP 51496-98
12/29/2009	Make Me Wanna Die	The Pretty Reckless	Seventeen Magazine (www.seventeen.com)	40 days or until cap reached	10K		EMP 51501-03
1/14/2010	Miss You	Tinashe	Artist's website (http://www.tinashe.co.uk/) and social networks	3 months	1.5K	Requires user to input personal data	EMP 51507-09

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1/21/2010	Heroes	Peter Gabriel (written by David Bowie/Brian Eno)	Music for Relief Haiti Appeal (www.musicforrelief.org); Peter Gabriel's website (www.petergabriel.com)	1 year		Download available at no cost but site requests that user make a donation to chairty for Haiti Relief	EMP 51520-24
1/21/2010	Out of the Ashes	Michael Bolton	Music for Relief Haiti Appeal (www.musicforrelief.org)	1 year		Download available at no cost but site requests that user make a donation to chairty for Haiti Relief	EMP 51525-28
1/25/2010	Woman Put Your Weapon Down	Justin Nozuka	Napster and AT&T Wireless Free Track of the Month (Napster and AT&T websites)	1 month		Available only to AT&T and Napster Mobile customers	EMP 51538-40
1/28/2010	Double Knots	The Living Sisters	KCRW Download of the Day (www.kcrwmusic.com)	24 hours			EMP 51922-24
2/9/2010	You've Been a Friend to Me	Bryan Adams	Vancouver Province Newspaper 2010 Olympic Games Promotion (www.theprovince.com)	30 days or until cap reached	20K		EMP 51534-35
2/10/2010	No Mercy	Bullet For My Valentine	Artist website (www.bulletformyvalentine.com)		Yes		EMP 51545